

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LEWIS D. CHRISTOPHERSON,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

Case No. 3:13-cv-00114-MMD-VPC

ORDER ADOPTING AND ACCEPTING
REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE

Before the Court is Magistrate Judge Valerie P. Cooke's Report and Recommendation ("R&R") (dkt. no. 32) regarding Plaintiff Lewis D. Christopherson's Motion for Remand and/or Reversal ("Motion") (dkt. no. 17) and Defendant Carolyn W. Colvin's Opposition and Cross-Motion to Affirm (dkt. nos. 28, 29). Plaintiff replied to the Opposition and Cross-Motion (dkt. no. 30). Magistrate Judge Cooke issued the R&R on March 24, 2014, concluding that substantial evidence supports the Administrative Law Judge's ("ALJ") findings. (Dkt. no. 32 at 18-19.) Plaintiff timely filed an objection (dkt. no. 33) to which Defendant responded (dkt. no. 34).

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). In light of Plaintiff's objection, the Court has engaged in a *de novo* review to determine whether to adopt Magistrate Judge Cooke's R&R.

1 The R&R finds that the ALJ's decision to uphold the denial of Plaintiff's disability
2 claims was supported by substantial evidence in the record. The R&R provides a
3 thorough and detailed explanation of the ALJ's decision that can be used to address
4 each of Plaintiff's objections, which reiterate the arguments he raised in the Motion.

5 First, Plaintiff argues that the ALJ failed to properly assess his residual functional
6 capacity ("RFC") because the ALJ gave improper weight to the opinions of a consultative
7 examiner and a state agency reviewing physician. (Dkt. no. 33 at 3.) Plaintiff contends
8 that the consultative examiner failed to review his entire medical record in carrying out
9 his independent examination. (*Id.* at 4.) Plaintiff further argues that both the consultative
10 examiner and the reviewing physician should have considered medical findings that
11 were made after their examinations. (*Id.* at 4-5). Plaintiff, however, does not cite to any
12 authority that requires examining physicians to review subsequent medical evidence.
13 Rather, it is the SSA that must determine an applicant's RFC by assessing the whole
14 record, including all evidence and medical reports. 20 C.F.R. § 404.1545(a); see
15 *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). The R&R discusses that in
16 determining the RFC, the ALJ considered the entire record in addition to the subsequent
17 medical findings of Plaintiff's treating physicians. (Dkt. no. 32 at 8, 10-12.) The R&R
18 concludes that the ALJ did not err in considering findings from the consultative examiner
19 and the state agency physician as part of the RFC determination. (*Id.* at 13.) The Court
20 agrees with the Magistrate Judge's conclusion that substantial evidence supports the
21 RFC determination.

22 Second, Plaintiff contends that the ALJ improperly evaluated the credibility of his
23 subjective complaints. (Dkt. no. 33 at 6-8.) The R&R notes that the ALJ found
24 inconsistencies between Plaintiff's subjective complaints regarding the severity of his
25 symptoms, Plaintiff's testimony about his daily activities, and the medical evidence. (Dkt.
26 no. 32 at 16-18.) The Court agrees with the Magistrate Judge's conclusion that these
27 inconsistencies adequately support the ALJ's credibility determination. (*See id.* at 18.)

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1 The R&R recommends that the Court deny Plaintiff's Motion for Remand and/or
2 Reversal (dkt. no. 17) and grant Defendant's Cross-Motion to Affirm (dkt. no. 29). Upon
3 review of the R&R and the record in this case, the Court determines that it is appropriate
4 to adopt the R&R in full.

5 It is hereby ordered that the R&R (dkt. no. 32) is accepted and adopted. Plaintiff's
6 Motion to Remand and/or Reverse (dkt. no. 17) is denied and Defendant's Cross-Motion
7 to Affirm (dkt. no. 29) is granted. The Clerk is directed to enter final judgment in favor of
8 Defendant Carolyn W. Colvin, Commissioner of Social Security, pursuant to this Order.

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10 DATED THIS 4th day of March 2015.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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